IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION No.8142 OF 2005

Shri Yesu Swami Pillay (David)
deceased through his legal heirs
Smt. Saroj Yesu Pillay & ors. .. ..Petitioners
Versus
Shri Ramakant Laxman Tilekar .. ..Respondent

Mr.Sanjay Kshirsagar for petitioners
Mr.S.D.Patil for respondent

CORAM : P.V.KAKADE, J.

DATE : 23RD JANUARY 2006.

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. In view of the facts and circumstances Rule, rule is made returnable forthwith by consent.

3. The Writ Petition is preferred against the judgment and order passed by the District Judge, Pune dated 18.10.2005 dismissing the appeal of the tenant and confirming the decree passed by the lower court against the tenant under Section 13(1)(g) of the Bombay Rents,

Hotel and Lodging House Rates Control Act, 1947 for reasonable and bona-fide requirement of the suit premises for the residence of members of the plaintiff-landlord's family and consequential finding as to the effect that the greater hardship would be caused, if the decree is not passed.

4. Without further elaboration, it is seen from the record that, in order to dispel the lower court's decision for possession of the suit property, the petitioner-appellant had filed application under Section 41 Rule 27 of Civil Procedure Code to introduce the additional evidence on the ground that the plaintiff-landlord had obtained suitable alternative accommodation by constructing his own bungalow. However, the appellate court by order dated 19.3.2005 directed that the application would be heard along with appeal itself. In fact, perusal of the judgment of the appellate court shows that there is not a whisper in the judgment in respect of the fate of the application under Order 41 Rule 27 of C.P.C. filed by the tenant and therefore, we are unable to decide the fate of the issue involved one way or the other. Under the circumstances, I have no option but to remand the matter for limited purpose with direction to

the lower appellate court to decide the application under Order 41 Rule 27 of C.P.C. one way or the other and if it is allowed and additional evidence is taken into account, then the issue of bonafide requirement and comparative hardship shall be decided afresh in the light of such additional evidence, if allowed to be introduced.

5. It is also to be noted that for the said purpose the present petitioner had filed review application trying to bring on record this aspect, however, the order passed by the lower appellate court dated 18.10.2005 passed on review application shows that it was dismissed on technical ground without referring to the merits thereon and therefore, the issue, as noted above, remained to be solved. Hence, Rule is made absolute and it is directed that the judgment and order passed by the lower appellate court dated 16.7.2005 is hereby set aside. The matter is remanded to the District Judge, Pune to adjudicate the application under Order 41 Rule 27 of C.P.C. The matter to be decided within six weeks from the date of receipt of Writ of this Court. With this direction the petition stands disposed of with no order as to costs.

6. Needless to mention that pending the adjudication

of the application before the lower appellate court the parties shall maintain status-quo with regard to the suit premises.